

§ 31.6011(a)-4T

26 CFR Ch. I (4-1-11 Edition)

not required to withhold tax from non-payroll payments for calendar year 1994 must make a return for the first calendar year after 1994 in which the person is required to withhold such tax and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)-6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this paragraph (b). Non-payroll payments are—

(1) Certain gambling winnings subject to withholding under section 3402(q);

(2) Retirement pay for services in the Armed Forces of the United States subject to withholding under section 3402;

(3) Certain annuities as described in section 3402(o)(1)(B);

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)-1 and 31.6091-1, respectively.

(d) [Reserved] For further guidance, see § 31.6011(a)-4T(d).

(86 Stat. 944, 26 U.S.C. 6364; and 68A Stat. 917, 26 U.S.C. 7805; 68A Stat. 747, 26 U.S.C. 6051)

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 7096, 36 FR 5217, Mar. 18, 1971; T.D. 7200, 37 FR 16544, Aug. 16, 1972; T.D. 7577, 43 FR 59359, Dec. 20, 1978; T.D. 7580, 43 FR 60159, Dec. 26, 1978; T.D. 8504, 58 FR 68035, Dec. 23, 1993; T.D. 8624, 60 FR 53510, Oct. 16, 1995; T.D. 8672, 61 FR 27008, May 30, 1996; T.D. 9239, 71 FR 14, Jan. 3, 2006; T.D. 9405, 73 FR 37375, July 1, 2008; T.D. 9440, 79358, Dec. 29, 2008]

§ 31.6011(a)-4T Returns of income tax withheld (temporary).

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in § 31.6011(a)-4(a)(2), (a)(3), (a)(4), and (b), and in § 31.6011(a)-5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has

filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in § 31.6011(a)-4(a)(2), (a)(3), (a)(4) and (b), and in § 31.6011(a)-8, Form 941, “Employer’s QUARTERLY Federal Tax Return,” is the form prescribed for making the return required under this paragraph (a)(1).

(a)(2) through (a)(3) [Reserved] For further guidance, see § 31.6011(a)-4(a)(2) through (a)(3).

(4) *Employers in the Employers’ Annual Federal Tax Program (Form 944)*—(i) *In general.* Employers notified of their qualification for the Employers’ Annual Federal Tax Program (Form 944) are required to file Form 944, “Employer’s ANNUAL Federal Tax Return,” instead of Form 941 to make a return of income tax withheld from wages pursuant to section 3402. Upon proper request by the employer, the Internal Revenue Service (IRS) will notify employers in writing of their qualification for the Employers’ Annual Federal Tax Program (Form 944). Qualified employers are those with an estimated annual employment tax liability (that is, social security, Medicare, and withheld federal income taxes) of \$1,000 or less for the entire calendar year, except employers required under § 31.6011(a)-4(a)(2) to make a return on Schedule H (Form 1040), “Household Employment Taxes,” or § 31.6011(a)-4(a)(3) to make a return on Form 943, “Employer’s Annual Federal Tax Return For Agricultural Employees.” The IRS may increase the amount of the estimated annual employment tax liability that qualifies employers to file Form 944 through a revenue procedure, notice or other IRS guidance published in the Internal Revenue Bulletin. The IRS will notify employers when they no longer qualify for the Employers’ Annual Federal Tax Program (Form 944) and must file Forms 941 instead.

(ii) *Request to participate and eligibility to opt out of the Employers’ Annual Federal Tax Program (Form 944).* The IRS will establish procedures in a revenue procedure, notice, or other IRS guidance published in the Internal Revenue Bulletin for employers to follow to request to receive notification to participate in the Employers’ Annual Federal

Tax Program (Form 944) and to be removed from the Employers' Annual Federal Tax Program (Form 944) after becoming a participant in order to file Forms 941 instead.

(b) through (c) [Reserved] For further guidance, see § 31.6011(a)-4(b) through (c).

(d) *Effective/applicability dates*—(1) *In general.* Paragraphs (a)(1) and (a)(4) of this section apply to taxable years beginning on or after December 30, 2008. The rules of paragraph (a)(1) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-4. The rules of paragraph (a)(4) of this section that apply to taxable years beginning before December 30, 2008, are contained in § 31.6011(a)-4T in effect prior to December 30, 2008.

(2) *Expiration date.* The applicability of this section will expire on or before December 23, 2011.

[T.D. 9440, 73 FR 79358, Dec. 29, 2008]

§ 31.6011(a)-5 Monthly returns.

(a) *In general*—(1) *Requirement.* The provisions of this section are applicable in respect of the taxes reportable on returns required pursuant to § 31.6011(a)-1 or § 31.6011(a)-4. An employer (or other person) who is required by § 31.6011(a)-1 or § 31.6011(a)-4 to make quarterly or annual returns on any such form shall, in lieu of making such quarterly or annual returns, make returns of such taxes in accordance with the provisions of this section if the employer is so notified in writing by the IRS. Every employer (or other person) notified by the IRS shall make a return for the calendar month in which the notice is received, for each of the prior calendar months in the return period, and for each calendar month afterwards (whether or not wages are paid in any such month) until the employer has filed a final return or is required to make quarterly or annual returns pursuant to notification as provided in paragraph (a)(2) of this section. Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer (or other person) under the provisions of § 31.6011(a)-1 or § 31.6011(a)-4, except that, if some other form is furnished by

the IRS for use in lieu of such prescribed form, the return shall be made on such other prescribed form. The IRS may notify any employer (or other person)—

(i) Who by reason of notification as provided in § 301.7512-1, is required to comply with the provisions of such § 301.7512-1; or

(ii) Who failed to—

(A) Make any return required pursuant to § 31.6011(a)-1 or § 31.6011(a)-4;

(B) Pay tax reportable on any such form; or

(C) Deposit any such tax as required under the provisions of § 31.6302-1.

(2) *Termination of requirement.* The IRS, in its discretion, may notify the employer in writing that the employer shall discontinue the filing of monthly returns under this section. If the employer is so notified, the IRS will provide the employer with instructions for filing the final monthly return. Afterwards, the employer shall make quarterly or annual returns in accordance with the provisions of § 31.6011(a)-1 or § 31.6011(a)-4.

(b) *Information returns on Form W-3 and Social Security Administration copies of Form W-2.* See § 31.6051-2 for requirements with respect to information returns on Form W-3 and Social Security Administration copies of Form W-2.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)-1 and 31.6091-1, respectively.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7351, 40 FR 17145, Apr. 17, 1975; T.D. 7580, 43 FR 60154, Dec. 26, 1978; T.D. 8637, 60 FR 66133, Dec. 21, 1995; T.D. 9061, 68 FR 34799, June 11, 2003; T.D. 9405, 73 FR 37375, July 1, 2008]

§ 31.6011(a)-6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages and nonpayroll payments.* An employer (or other person) who is required to make a return on a particular form pursuant to § 31.6011(a)-1, § 31.6011(a)-4, or § 31.6011(a)-5, and who in any return period ceases to pay wages or nonpayroll payments in respect of which he is required to make a return on that form, must make the return for the period as a final return. Each return made as a final return